The Solicitors' Journal

VOL. 91 — Saturday, October 18, 1947 — No. 40

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CURRENT TOPICS

Viscount Caldecote

IN THE SOLICITORS' JOURNAL of 26th January, 1946 (vol. 90, p. 35), we recorded the regret of the legal profession at the resignation on account of ill-health of Lord CALDECOTE from the office of Lord Chief Justice. It is with sorrow that we now mark his passing away on 11th October, 1947, at the age of seventy-one. It will be of interest to readers of this journal that his father was a well-known Bristol solicitor. The length of time for which he held high offices in the judicature constituted something of a record. Certainly no one has been twice Attorney-General and thrice Solicitor-General since the reign of Henry VII. Be it added that he undertook those offices with distinction. He was Solicitor-General from 1922 to 1928, with a few months' interval in 1924, and Attorney-General from 1928 to 1929 and from 1932 to 1936. After an interval during which he held political office as Minister for Co-ordination of Defence and Secretary of State for the Dominions, he became Lord Chancellor in 1939 and held that office until 1940, when he became Lord Chief Justice. He was called to the Bar by the Inner Temple in 1899 and took silk in 1914. In the 1914–18 war he served in the Naval Intelligence Division of the Admiralty. In 1918 he became head of the Naval Law Branch in the Admiralty, and in 1919 he became representative of the Admiralty on the War Crimes Committee. He was created a viscount in 1939. Those solicitors who wished their cases to be presented with simplicity and vigorous directness of expression sought Thomas Inskip. An outstanding example of dignity was his manner of conducting the litigation which led to the passing of the Sunday Entertainments Act, 1932. An ardent supporter of the established Church, he was Chancellor of the Diocese of Truro from 1920 to 1922, a member of the House of Laity of the Church Assembly, and President of the National Church League. He lived a life of Christian worth and dignity and leaves behind him an honoured name.

Lord Moncrieff

AFTER little more than six months' tenure of the office of Lord Justice Clerk, The Hon. LORD ALEXANDER MONCRIEFF, F.R.S.E., senior judge of the Court of Session in Scotland, has retired on the ground of ill-health. We wish him a speedy restoration to health and a happy retirement. Lord Moncrieff was born in 1870, the son of Alexander Moncrieff, Advocate and Sheriff of Ross and Cromarty. He himself was called to the Bar at the age of twenty-four, took silk in 1912 and became a Senator of the College of Justice in Scotland in 1926. For the benefit of English readers the College of Justice consists of those persons who take part in the administration of justice in the Court of Session in Scotland, the canon law status of a *collegium* having been conferred upon them by Pope Paul III. The Lord Justice Clerk is the second judicial officer in Scotland. The Lord President is the first and he presides over the first division of the Court of Session. The Lord Justice Clerk presides over the second division. Lord Moncrieff is succeeded by Mr. G. R. THOMSON, K.C., who was until recently Lord Advocate.

Judge Hildesley, K.C.

AFTER fifteen years' service as chairman of East Suffolk Quarter Sessions, His Honour Judge ALFRED HILDESLEY announced his resignation on 7th October, for reasons of health. Alfred Hildesley was called to the Bar by the Inner Temple in 1898, at the age of twenty-five. He took silk in 1929, and was appointed one of His Majesty's Judges of County Courts in 1931, his circuit being No. 33 (Essex and Suffolk). Many solicitors will preserve recollections of his ability at the Bar and especially of his skill in handling a commercial case. Few could argue a subtle point arising on a bill of exchange or a cheque with more ingenuity and dexterity. This was not surprising from another point of view than that of natural talent, for he was born and brought up in Manchester, and naturally chose the Northern Circuit as his "beat," where there was plenty of commercial work on which to sharpen his wits. Judge Hildesley is a judge before whom it is a pleasure to appear, and it is to be hoped that the Bench will not entirely lose the benefit of his assistance from time to time.

Judges and Industrial Inquiries

EXAMINATION of the biographies of famous modern judges and King's Counsel reveals that a great part of their time is employed in presiding over Royal Commissions, departmental committees and industrial courts of inquiry. The main criticism of this tendency has hitherto been that it takes away from their ordinary duties men who can ill be spared. A further ground of criticism was put forward by Lord Justice EVERSHED on 11th October in an address to the conference of Personnel Managements at Blackpool. It will be recalled that Lord Justice Evershed recently presided over the inquiry into the Liverpool Docks strike. He said that if judges were constantly being called upon for that sort of task two things were likely to happen. First, the judicial cause lists would get gravely behind. Those desiring divorce would justly complain that judges were not performing the functions they are paid for. Secondly, in the case of the dock strike, the conclusion they came to was accepted, but it would not necessarily follow that every time a judge said: "The answer is so and so," it would be accepted. It was not right that the decisions of judges should

be liable to be flouted. The second ground of criticism is not so convincing as the first. The sanctions which enforce obedience of a judgment or order are execution in civil matters and penalties in criminal proceedings. We have not yet reached the stage when a judge's finding in an extra-judicial inquiry can be attended by sanctions, but it is a tribute to the impartiality of our judges that their findings in these inquiries are usually respected. Their experience and wisdom are of vital service to the community in such matters, but the question still remains whether they are rightly spared from their proper functions. Most people will agree with Lord Justice Evershed that they are not.

Justice for Jurymen

IN a case at the Central Criminal Court on 6th October, a juryman applied for a day off on behalf of himself and five other jury members sitting with him to try a case which had reached its eleventh day of hearing. The juryman's own words are worth quoting: "We are all of us more or less over-worked in our offices, and when the court rises in the afternoon we have to go to our offices and work until eight or nine at night during the week, and also have to go on Sundays to deal with arrears." This is a hardship of the law from which lawyers are exempt, but they can spare a thought, and sometimes a deed, for the juryman. His is the only branch of national service which is not adequately paid, or, indeed, relatively speaking, paid at all, for *de minimis non curat lex*. The payment is nothing in criminal cases, and only one shilling for a common juror in a civil case, and one guinea for a special juror. A Departmental Committee recommended reforms as long ago as 1911, and nothing has as yet been done to adopt them. Jurors sit on hard seats, often without backs, without room to stretch their legs, for days at a time, and, as Mr. Justice Humphreys once remarked, they should at least be provided with armchairs. Millions of lucky people are exempt from jury service, and do not suffer these serious interferences with their daily work, and the losses that result. It may well be asked whether any long-term legislative remedies are justifiable, if they demand parliamentary time at the expense of prolonging injustices which are near at hand and easily remedied.

The Refresher Courses

THE remarkable success of the Refresher Courses which the Council of The Law Society have held since the end of the war is illustrated in the details of a report published in the September issue of the *Law Society's Gazette*. The last of the London Refresher Courses was held on 27th June, 1947. The idea dates back to 26th September, 1941, when the secretary mentioned in a memorandum to the Council that a proposal for refresher courses was under consideration by the Legal Education Committee. The difficulties of planning when nothing was cut and dried need little emphasis, and the success with which a band of capable lecturers under Mr. R. E. MEGARRY, Director of the Refresher Courses, with the assistance of the sub-committee, produced course after course of lectures for increasing numbers of students, was outstanding. The total number of students who attended courses in London was 1,559, of whom 933 attended the day courses and 608 attended the evening courses. Approximately 200 attended the courses in the provinces. The Modern Law Manual, which the sub-committee arranged with Messrs. Butterworths to publish, was of considerable use to ex-servicemen and to practitioners generally. The attendance lists show that in London the attendances at the daytime lectures rose from 59 in September, 1945, to 135 in February, 1946, and gradually fell to 13 in March, 1947. The rise and fall was similar in the case of the evening lectures. In the provinces Bristol had two courses of ten weeks each at which an attendance of 43 was recorded, and Liverpool had two courses each of 44 lectures, at which an attendance of 63 was recorded. At Leeds there were 28 solicitor students, and Nottingham and Sheffield each had 25.

Pretending to be a Solicitor

MANY solicitors will have read the series of articles in *Reynolds' News* by "A Poor Man's Lawyer." A novel and somewhat elaborate method of "pretending" to be a solicitor contrary to the Solicitors Acts was described in the article published on 28th September. Like most elaborate attempts at criminality, it was also clumsy and stupid. A young man had walked from behind a stationary car, brushed against a car that was being driven in second gear, and proceeded to lie motionless in the road. Two other men came to his assistance and there followed a scene in which the previously unconscious pedestrian took names and addresses of witnesses and of the motorist, with the expressed view of suing for compensation. The motorist consulted his solicitor, who received a call a few days later from a man who said he represented a firm of solicitors and would be willing to arrange a compromise. The solicitor arranged for a second visit and meanwhile ascertained that his visitor was not a solicitor, but a former solicitor's clerk who had for years been handling similar fraudulent claims. On his second visit the solicitor had his conversation recorded by keeping the dictaphone running with the mouthpiece concealed. When the visitor had said enough, the solicitor switched off the machine and showed him the record, telling him it contained sufficient of his remarks to convict him of pretending to be a solicitor. It seems that the solicitor then allowed him to go, a circumstance which is open to strong criticism, because the criminal may be expected to continue his depredations. "Pretending to be a solicitor" is always a tempting form of business to a rogue, and persons caught red-handed must be prosecuted to prevent them from committing further mischief.

Soldiers and Infants' Contracts

AN infant is bound by a contract of apprenticeship or service only if it is for his benefit. As the court expressed the matter in *Clements* v. *L. & N.W. Railway Co.* [1894] 2 Q.B. 482: "The question has always been whether the contract, when carefully examined in all its terms, is for the benefit of the infant. If so, the court will not allow the infant to repudiate it." The infant is therefore not completely free of his obligation, as in cases under the Infants' Relief Act, 1874, but only conditionally so. A correspondent, writing to *The Times* of 8th October over the signature "*Spero meliora*," stated that his young brother was called up at eighteen years of age and within about three weeks he wrote home stating that he had signed on as a regular soldier for five years. He had in fact, the letter stated, been offered civilian work, with a good salary and prospects, if he could take it at twenty years of age. His brother's salary in this employment would have been of great assistance in the home. "Can a boy under twenty-one," the correspondent pertinently asked, "give an undertaking to serve for five years without parents' consent and prior approval?" In view of the various statutes relating to military service, it would seem that an infant who repudiated an obligation which, if it were of a civilian character, he might well be entitled to disregard, would be guilty of the military offence of desertion. It should be seriously considered by the War Office whether, in binding infants to obligations entered into without consulting their parents and guardians, they are observing the normal rules of social conduct laid down by English law for private individuals.

Travellers and Innkeepers

THIS is an age when in a manner of speaking we are all travellers, even for such routine purposes as travelling to work and to the shops. Whether or not we are "travellers" in law is another matter. One recalls the incorruptible Mr. Pooter in "The Diary of a Nobody," who refused to pretend to be a "commercial" so as to have the privilege of entering a hostelry on a Sunday morning walk with his friends, and consequently had to walk about for two hours while his friends regaled themselves inside. One recalls also the case of *Hoban* v. *Royal Hibernian Hotel, Ltd.* (1946), 80 Ir. L.T. 61,

referred to in our issue of 13th July, 1946 (vol. 90, p. 323), concerning the Irish gentleman of leisure who, in an interval in his daily perambulation of the streets of Dublin, insisted on being served with a cup of coffee in the Royal Hibernian Hotel. There was also the English case of *R.* v. *Rymer* (1877), 2 Q.B.D. 136, in which it was held that a person who lived about half a mile away from a public-house which he frequented was not a traveller. At the West Riding Quarter Sessions held at Wakefield on 9th October, an innkeeper was fined £20 on each of three summonses charging him with refusing accommodation to travellers without lawful excuse in October and November, 1946, and March, 1947. The chairman observed that the defendant had refused to receive three respective parties at a time when he had room in his house. Circumstances might still exist, he said, in which the obligations of people who kept inns remained as great as ever, certainly as regards accommodation.

Release of Deposit

A USEFUL piece of advice to solicitors acting for purchasers is contained in the September issue of the *Law Society's Gazette*. Estate agents have drawn the attention of the Council of The Law Society to the practice of vendors' solicitors asking agents holding deposits as stakeholders to account after completion for deposits, on the authority, so far as the purchasers are concerned, of a signed request by the purchasers' solicitors which is either not on headed notepaper or is on the vendors' solicitors' notepaper. It is stated that this is presumably because the purchasers' solicitors have omitted to take with them their own firm's notepaper on attending to complete. The Council express the opinion that purchasers' solicitors should endeavour to adhere to the correct practice of typing the authority for the release of a deposit on the firm's notepaper.

The Road Committee's Report

CAREFUL study of the Final Report of the Committee on Road Safety will be necessary before official action can be taken on all its recommendations. Some action can, however, be taken at once on the less controversial parts of the report. It is difficult to imagine that any serious criticism can be made of the proposals to ensure stricter supervision of the condition of vehicles, which seem carefully considered and not a whit excessive. It is suggested that vehicles should be periodically inspected in publicly owned testing stations, and that permanent stations should be set up in towns where the number of vehicles registered within a radius of eight miles approaches 20,000. Other places would be served by mobile testing stations. There would be routine inspections not more than twice yearly, and vehicles would also be liable to be called in for testing if suspected of being unserviceable, irrespective of whether or not they had been involved in an accident. New vehicles, excluding omnibuses, would not have to be tested for six months. If a vehicle passed the inspection tests the driver would receive a certificate, but if it failed it would have a stop notice pasted on the windscreen and the driver would receive a form indicating the fault or faults and telling him to bring the vehicle for another inspection within a stated period. The number of accidents resulting from defective brakes and steering alone would justify these proposals. For similar reasons the proposal that direction indicators and stop lights should be compulsory seems salutary.

Cyclists and Pedestrians

A MORE controversial feature of the report is the series of recommendations with regard to the conduct of pedestrians and cyclists on the roads. It is suggested that a number of new criminal offences should be created as follows: failure to conform with the signal of a police officer regulating traffic; impeding the free flow of traffic which has been signalled by a police officer or a traffic light, and disregard of pavement guard rails. A little less controversial is the proposal that cyclists should be liable to prosecution for reckless or careless driving. It is further suggested that they should be required to report to the police accidents in which personal injury is caused. The police, it is proposed, should have powers to stop pedal cyclists similar to their present powers of stopping motor drivers. The majority of the members of the committee, with only two dissentients, reject the proposal that cycles should be registered, on the ground that the administrative burden involved would be too heavy. The Pedestrians' Association issued a statement immediately on publication of the report stating that it will resist any proposal to create further "offences" until the present safety laws, particularly the observance of pedestrian crossings by motorists, are properly enforced, and until speed is brought under proper control. It added that because of the greater practical difficulty of securing a conviction against a motorist, there would be a dangerous temptation for the police to concentrate attention on the more vulnerable pedestrians, and that it would be the elderly and the infirm who would inevitably provide the greatest number of cases of "guilt."

TWO OR MORE TORTFEASORS—II

(*Concluded from p. 538*)

NATURALLY, each case of apportionment or contribution under s. 6 (2) of the Law Reform Act, 1935, must depend entirely on its own facts, but it is, nevertheless, instructive for the practitioner to observe how the subsection has been applied in reported cases.

Tucker, J., in *Rippon* v. *Port of London Authority and Russell* [1940] 1 K.B. 858, was concerned with an action against the P.L.A. as *de facto* occupiers of a dry dock, and against ship repairers who were using the dock, in respect of injuries sustained by the plaintiff through the defective condition of certain steps leading into the dock. It was found that there had been breaches of two statutory duties, one the responsibility of the P.L.A. and one which was imposed on the ship repairers by regulations which merely deemed them to be the occupiers. The learned judge seized on this circumstance and apportioned the damages in the proportion of three to one on the ground that the P.L.A. were in substance the occupiers, whereas the ship repairers were so only by a statutory notional occupancy. (The casual reader should beware of a misprint in the headnote: "second" in line 5 on page 859 should apparently be "first.")

In *Croston* v. *Vaughan*, reported on appeal at [1938] 1 K.B. 540, Porter, J., as he then was, finding (to adopt Greer, L.J.'s reading of his judgment) that one driver concerned in a running down case had been negligent in two respects, namely, not stopping in time and not giving an adequate signal, whereas another driver involved in the same accident had been guilty of only one fault, proceeded to apportion the damages which he awarded to an injured passenger in one of the cars in the proportion of two to one.

In each of these two cases it seems that the measure of responsibility taken has been rather a comparison of the respective degrees of legal liability of the tortfeasors than the purely causal test insisted on by Hilbery, J. To this extent they may be taken as exemplifying the view of Hallett, J., in the *Weaver* case (see 91 SOL. J., 538).

One of the defendants in *Daniel* v. *Rickett, Cockerill & Co.* [1938] 2 K.B. 322 was the occupier of premises at which coal was being delivered. He had, by his servant or representative, indicated to the coal carter a coal flap leading to the cellar of the house. The carter proceeded to lift the flap and deliver the coal, but while the flap was still removed the plaintiff, an elderly passer-by, put her foot through the hole thus caused in the pavement and was injured. She sued both the coal merchant and the occupier and Hilbery, J. (following as far as concerned the occupier, an almost identical case—*Pickard* v. *Smith* (1861), 10 C.B. (N.S.) 470), found that both had been negligent. In these circumstances the learned

judge considered that the householder's responsibility was small "because, although that which the householder directed should be done must create a danger, in so far as it results in there being a hole in the highway, it need not, if proper precautions are taken, result in any danger to anybody who was taking reasonable care for his own safety . . . The responsibility rests far more on the coal merchant who, in such circumstances, does not take reasonable precautions to safeguard foot-passengers after the cellar flap has been opened." The contribution by the occupier to the coal merchant was accordingly fixed at one-tenth.

Smith v. *Bray* (1939), 56 T.L.R. 200, was a running down case. Holding that each of two drivers had approached a crossing carelessly, Hilbery, J., thought it impossible to say that one was more the cause of the accident than the other. One might be guilty of greater want of care, but that did not affect causality if without the negligence of the other the accident would not have happened. A fair division under the Act was that each should pay half the damages. Incidentally, the contribution was in this as in other cases extended to the costs of defending the action, the learned judge acceding to the argument that "responsibility for the damage" meant responsibility for the whole liability of the tortfeasor and not only for the damages awarded by the court.

In *Collins* v. *Hertfordshire County Council and Another* [1947] K.B. 598, Hilbery, J., had found that a hospital authority had allowed a dangerous system to be used for the prescription and preparation of drugs, and that they were responsible for the negligence of a person acting as resident surgical officer who had ordered a wrong drug from a pharmacist and of the pharmacist who had dispensed the drug. The operating surgeon who had injected the drug, however, was not under the control of the authority. His liability for the death of the patient so injected was therefore distinct from the hospital's, and was founded on the fact that he had omitted to ensure that the mixture was the correct one. Apportioning the damages of £2,500 which he awarded to the patient's widow, his lordship observed that right up to the very moment of injection and even afterwards (this was because the surgical officer was found not to have reacted with sufficient promptitude on certain symptoms showing themselves after the fatal injection) there was negligence on the part of the hospital. On the other hand the operating surgeon had also selected a late moment to take his precaution, though a moment which would have been effective if the precaution had then been taken. The learned judge felt quite unable to do otherwise than direct that the hospital authority and the operating surgeon should share equally the responsibility which was there up to the last moment.

The latest case (*Weaver* v. *Commercial Process Co., Ltd., and Others* (1947), 63 T.L.R. 466) concerned a jar containing nitric acid supplied by the second defendants to the first defendants. The plaintiff received injuries when the jar broke while being handled by a young employee of the first defendants. The judge held both defendants guilty of negligence, the second in that the jar which they supplied was cracked, and the first in that they entrusted the handling of the jar to a young employee without taking any special precautions to avoid the possible consequences. Having decided to apply the test of tortious responsibility and not that of causation, Hallett, J., ordered that the first defendants should bear ten per cent. of the damages and costs.

Certainly the discretion of the judge in making an order under s. 6 (2) is wide, and is in most cases final, for in *Ingram* v. *United Auto Service* [1943] K.B. 612, the Court of Appeal held (following a House of Lords decision relating to the apportionment of loss in maritime collisions) that if it did not interfere with the judge's finding of fact on the question of liability, it ought not to disturb his estimate of the appropriate contribution.

In *Croston* v. *Vaughan, supra*, the actual point decided by the Court of Appeal was that the provisions of s. 6 of the Law Reform (Married Women and Tortfeasors) Act, 1935, might be invoked in an action in which both tortfeasors were defendants, and that there was no necessity for a separate action to recover the contribution authorised by the section. The contribution is in fact recoverable in proceedings of various types. The third party procedure is quite commonly employed, for if there is a clear case against one of two possible defendants and a doubtful case against the other a plaintiff will still normally sue only the virtual certainty. Some points of practice have been judicially decided in this connection.

Lean v. *Alston* [1947] K.B. 467 is a recent example. Arising out of a collision between a motor cycle and a motor car, an action was brought by a pillion passenger on the motor cycle against the owner of the car, who now wished to claim contribution from the estate of the driver of the motor cycle, the latter having been killed in the collision. The motor cyclist died intestate and no grant of representation to his estate had been applied for. The Court of Appeal, on the application of the car owner, notwithstanding that there had been no action pending between the defendant and the deceased or his widow, exercised an inherent equitable power to see that all appropriate interests were represented before the court, and appointed a representative of the deceased's estate upon whom a third party notice could be served. Scott, L.J., puts the matter on the ground of the avoidance of the unnecessary expense of a second action which would undoubtedly have lain between the tortfeasors after a judgment in the plaintiff's favour.

As in all branches of practice, the provisions of the Limitation Acts need to be watched in dealing with third party notices, and in this connection a sharp difference of judicial opinion is noticeable. The question at issue is the important one as to the date when a cause of action for contribution by one tortfeasor against another is deemed to arise. Birkett, J., in *Merlihan* v. *A. C. Pope, Ltd. and Another* [1946] K.B. 166, described the point as a new one. He allowed the Limitation Act, 1939, s. 21, to be pleaded in bar by a third party who was entitled to be treated as a public authority and against whom no proceedings had been taken within twelve months from the date of the alleged negligent act in respect of which the third party notice was issued. Shortly, Birkett, J., held that the cause of action accrued at that date and not at the subsequent date when the court found his co-tortfeasor, the defendant in the action, liable for the damage arising from the negligent act.

Cassels, J., however, in a more recent case (*Hordern Richmond, Ltd.* v. *Duncan* [1947] K.B. 545) found it difficult to say that he would have arrived at the same conclusion on similar facts. He was dealing with a case arising out of a collision between vehicles driven respectively by an individual who was entitled to public authority protection and by the servant of a private company which was not. The company apprehended the possibility of being sued by persons who had been injured in the collision. That possibility had not so far materialised, but, since more than twelve months had passed since the accident, they sought a declaration that in any such action they would be entitled to serve a third party notice on the "public authority" notwithstanding the elapsing of the limitation period. Cassels, J., took the view that, even though an action by the party injured directly against the service driver were barred, the issue of a third party notice would be competent. "The cause of action which brings a plaintiff and a defendant before the court in such a case as may arise out of this accident is negligence. The cause of action which entitles a defendant to bring a third party before the court is the liability of the third party to make contribution or to pay an indemnity. That cause of action has not arisen until the liability of the defendant has been ascertained." Accordingly the learned judge granted the declaration, observing that it was part of the equity jurisdiction and therefore very much a matter of the discretion of the court in the circumstances of the case before it. Whether a judge subsequently trying the case would subscribe to the view of Birkett, J., or his own he did not know. The limitation plea is thus still open for the proposed third party.

It remains to consider the point at issue in *Apley Estates Co. and Others* v. *De Bernales and Others* [1947] Ch. 217, referred to *ante*, p. 538. Distinct from the old rule, now abrogated, that a judgment against one joint tortfeasor barred an action against another, is the rule that a release of one joint tortfeasor operates also as a release of the other. This rule dates at least from *Cocke* v. *Jenner* (1614), Hob. 66, and seems to be quite unaffected by the 1935 Act. The reason for it is again the indivisibility of a joint cause of action—still a valid principle where not expressly varied by statute. On the other hand, it was decided in *Duck* v. *Mayeu* [1892] 2 Q.B. 511 that a covenant not to sue was in a different category from a release and did not free a joint tortfeasor. In the *Apley* case the Court of Appeal was concerned with a consent order which had been made by way of an agreed settlement of an action in tort against one of over thirty defendants. The order stayed the action on terms which included the following: "the plaintiffs . . . will not . . . sue or continue to sue the said defendants in respect of any of the matters the subject matter of the said action . . . but this agreement shall not . . . operate as a release of any cause of action of the plaintiffs . . . against the defendants or any of them in the said action . . . and shall not prejudice . . . the rights of the plaintiffs to proceed with their claims against the other defendants." It was argued that the imposition of the stay signified that the plaintiffs could not recover judgment against the defendant who had settled, and that therefore the cause of action against him and necessarily against the other joint tortfeasors was extinguished.

Morton, L.J., pointed out that this was a *non sequitur*. The imposition of the stay did not extinguish the cause of action. Somervell, L.J., also remarked that to say that an act discharges the liability of a tortfeasor if it precludes the plaintiff from recovering judgment is putting the issue the wrong way round. "In my opinion the court must direct its mind to what has taken place with regard to the tortfeasor with whom the covenant has been made." In the present case, although the plaintiffs had released their cause of action against one defendant, they had not in a technical sense discharged that defendant and were free to continue their action against the others.

CRIMINAL LAW AND PRACTICE

LOITERING IN A MOTOR CAR

EVERY advocate at some time or other has to defend a charge of loitering with intent to commit a felony. Every advocate who has defended more than one of these cases knows how easy it is for the police to make a mistake with regard to a poorly-clad person who happens to be staying in the vicinity of a motor car or walking round a dwelling-house for perfectly proper reasons, though they are trained to distinguish between the legitimate and the criminal loiterer.

For mistakes are committed. The object of the Vagrancy Act, 1824, s. 4, the Prevention of Crimes Act, 1871, s. 15, and the Penal Servitude Act, 1891, which deal with this class of offence, was the prevention of crime, and this is perhaps the most difficult part of the task of the police. Cases like *Hartley* v. *Ellnor* (1917), 26 Cox C.C. 10, and *Ledruth* v. *Roberts* [1937] 1 K.B. 232, show the care that the police must exercise. In the former case two suspicious acts separated by a forty minutes' interval were held to be sufficient to establish the offence. In the latter case one fact, it was held, was not sufficient.

The offence was created when loitering was mainly committed by foot passengers. Horse riders were guilty in large numbers of robbery with violence, and the offence of loitering was not created to deal with them. An interesting, and some may think an overdone, development of the law on this subject occurred in *Bridge* v. *Campbell* in the Divisional Court on 10th July (*ante*, p. 459). The loitering charged in that case was alleged to take place in a motor van driven by the defendant behind a carrier's van. It was proved that the defendant was "shadowing" the carrier's van by following it and stopping wherever it stopped. As soon as he found he was observed by the police he tried to escape. He gave an uncorroborated explanation of his movements, but the justices rejected it, convicted him and sentenced him to three months' imprisonment.

The contention on behalf of the defendant in the Divisional Court was that it was impossible to loiter in a motor car. Lord Goddard thought that the contrary proposition was self-evident, because motor cars were now commonly used by thieves, and much facilitated their activities, and the court dismissed the appeal.

This is, of course, sound common-sense, and in keeping with the spirit and object of the legislation creating the offence. The police would indeed be deprived of a valuable weapon if they could not take preventive action against motor car drivers. A decision to the contrary would in effect have been a gangster's charter.

It is interesting to find doubts expressed in *obiter* remarks of Lord Hunter and Lord Anderson in a Scottish case in the Court of Judiciary referred to in *Bridge* v. *Campbell*, but as Lord Goddard pointed out, the decision turned on the fact that the motorist did not stop, but slowed down, and therefore was not loitering. It is an important implication of that decision, and indeed Lord Goddard's decision expressly stated that a man did not loiter in the street if he merely slowed up for a moment and received something from a person. One can well imagine cases in which the police would find this rule an obstacle to the carrying out of their duties. All sorts of actions might be done by a car driver while his car is in slow motion, with the purpose of committing a felony.

Lord Goddard also gave a valuable summary of the law in dealing with the argument that the defendant was not a suspected person. He said that *Rawlings* v. *Smith* [1938] 1 K.B. 675; 81 SOL. J. 1024, decided that a man was not to be regarded as a suspected person merely because he had had a conviction five years' previously. An interval of five years may well be sufficient for a man to regain his character by continuously following an honest way of life. On the present evidence *Hartley* v. *Ellnor* (above) and *Rawlings* v. *Smith* (above) showed that it was open to the justices to find that he was a suspected person. Where justices disbelieved the evidence of a man and found that he was in a certain neighbourhood without legitimate business there and was shadowing a carrier's van there was no apparent reason why he should be so acting except to commit a felony.

In view of this decision it is encouraging to find that the authoritative police view has apparently never been other than that loitering may be committed in a motor car. In an admirable text-book called "Criminal Law and Police Investigations," by ex-chief inspector of Metropolitan Police, Reginald Morrish, published in 1942 by the Police Review Publishing Co., Ltd., the section on prevention of crime contains the following words, at p. 184: "Criminals do loiter to commit crimes . . . criminals in cars watch delivery vans to steal parcels. What is the object of the loiterer? The arrest of the classes mentioned has led to the investigation of serious crimes already committed, not necessarily in the same district, but all over the country."

The following members of the Middle Temple have been elected to Harmsworth law scholarships of £200 a year, tenable for three years: Mr. C. D. Chapman, Mr. R. D. L. Kelly, Mr. R. H. Widdows, Mr. J. L. J. Edwards, Mr. A. K. Hollings and Mr. S. W. Templeman.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26 Portland Place, W.1 (Tel.: Langham 2127), on Thursday, 30th October, 1947, at 8.15 p.m., when the President will deliver his presidential address entitled: "Retrospect and Prospect."

COMPANY LAW AND PRACTICE

TABLE A

THERE appears to be no very great hurry on the part of the Board of Trade to bring into operation any of the provisions of the Companies Act, 1947, and indeed it will almost certainly be some considerable time before all these provisions are brought into operation. When they do come into operation it will be desirable to make changes in existing articles and the form of the 1929 Table A will no longer be entirely appropriate.

It may perhaps be of some interest to point out some of the clauses of the 1929 Table A which will require alteration. Clause 6, for example, which prohibits the employment of funds of the company in the purchase of or in loans upon the security of the company's shares, will require extending to cover shares in holding companies and also to the subscription of a company's own shares (s. 73).

Clauses 39 and 40, which deal with general meetings and draw a distinction between ordinary general meetings and extraordinary general meetings, will also require to be altered so as to state the new obligation of the company to hold an "annual general meeting" (s. 1). Similarly, periods of notice of general meetings dealt with in cl. 42 will be different and there will in future be three classes of meetings for which different periods of notice will have to be given: those for passing special resolutions, annual general meetings and other general meetings (s. 2).

Clause 50, which deals with the number of persons who are entitled to demand a poll, will have to be altered so as to conform with s. 4. This and the following section introduce several other requirements in connection with meetings that have, so to speak, been complied with in advance by Table A, e.g., that a proxy shall be deemed to confer authority to demand a poll (cl. 62) and that a proxy is not to be required to be delivered more than forty-eight hours before the meeting. Clause 60, it will be remembered, merely says that it is to be deposited at the registered office of the company not less than forty-eight hours before the meeting.

Though these provisions will not call for any alteration of Table A, there are no doubt a number of companies with articles which will require to be altered to comply with them.

Certain alterations will also be required in the clauses dealing with directors; for example, cl. 80, which provides that the company may by extraordinary resolution remove any director, will have to have "ordinary" substituted for the word "extraordinary" (s. 29).

Various clauses from cl. 93 onwards will want considerable alteration owing to the new provisions as to accounts. Clause 93 itself says that the directors may set aside such sums as they think proper as a reserve or reserves, which shall at their discretion be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied.

Though there will be perhaps nothing absolutely wrong about this clause under the new Act it will give a misleading impression of the duties of the directors as to reserves and so on, and it will probably be thought desirable to refer to provisions as well as reserves in this clause so as to remind the directors of their duties to distinguish between various classes of sums set aside by them out of profits for the purposes of the company's accounts in accordance with the First Schedule to the Act.

It will also clearly be desirable to include in cl. 97, which deals with the obligation as to books of account, the requirement that they are to give a true and fair view of the state of the company's affairs and to explain its transactions (s. 12).

Similarly, cl. 101, which requires a copy of every balance sheet which is to be laid before the company in general meeting, and the auditor's report, to be sent to all persons entitled to receive notices of general meetings of the company, will be misleading until it is altered, for under s. 21 (3) all members, whether entitled to receive notices or not, and debenture-holders, are also to get copies of the balance sheet.

The foregoing instances, which are not intended to be exhaustive, indicate two types of alteration to Table A that will be required. One class of alteration will be necessary to make it comply with the new law and the other will at any rate be extremely desirable so that it shall not give a misleading impression of the requirements of the new law.

It may well be, however, that it will be thought desirable to insert in a new Table A quite new clauses dealing with matters which have not hitherto been mentioned in previous Table A's.

For example, it will be compulsory for a company to have a secretary (s. 26), and it would probably be a good thing if some reference to this was made in Table A. That section also refers to a person called "an assistant or deputy secretary," and some reference to what such a person is and how he is to be appointed might conveniently be inserted.

Similarly, it would probably be convenient if some reference was made to the provisions relating to the circulation of notices, etc., on the requisition of members, the matters to be stated in the directors' report and various other matters not previously appearing in Companies Acts. As indicated, however, any such alterations will not be essential.

It is to be hoped that a Consolidation Act will follow quickly on the 1947 Act, but under s. 379 of the 1929 Act the Board of Trade has power to alter the present Table A, and if the Consolidation Act is likely to take some time it may exercise this power. That will entail in the future the same inconvenience as is now experienced by those who try to find a copy of the 1906 Table A published by the Board of Trade in similar circumstances, a very difficult document to run to earth, but which can be found in part II of [1906] W.N., at pp. 233, 253.

A CONVEYANCER'S DIARY

RENT-CHARGES

THE practitioner is frequently approached by a tenant for life or trustees for advice on proposed transactions bearing upon the investment of trust funds or the application of capital money arising under a settlement. One such case which recently occurred concerned the purchase of land under the powers conferred by the S.L.A., 1925, and the resulting inquiry into the existing law led me to consider this subject in relation not only to that Act, but also to the position of trustees generally. Section 73 (1) (xi) of the S.L.A., 1925, authorises the investment of capital money arising under the Act in the purchase of land in fee simple, or in leasehold land held for a term having not less than sixty years to run at the time of the purchase, in either case whether subject or not to any exception or reservation of or in respect of mines or minerals therein or of powers relative to the working of mines or minerals therein, or in other land. Further, by s. 74 (1), land may be acquired on a purchase or exchange to be made subject to a settlement, notwithstanding that the land is subject to any Crown rent, quit rent, chief rent or other incident of tenure, or to any easement, right or privilege, or to any restrictive covenant, or to any liability to maintain or repair walls, fences, sea-walls, river banks, dykes, roads, streets, sewers or drains, or to any improvement rent-charge which is capable under the Act of being redeemed out of capital money. A rent-charge of this class is defined (*ibid*, s. 73 (1) (xiii)) as a rent-charge (temporary or permanent) created either before or after the commencement of the Act, in pursuance of any Act of Parliament, with the object of paying off any money advanced for defraying the expenses of an improvement of any kind authorised by Pt. I of

Sched. III to the Act; that is to say, a rent-charge created otherwise than for the purpose of paying for certain authorised improvements to the settled land is excluded from these provisions. Now rent-charges are legion, both in quality and quantity, and it is a serious disability if (as is apparently the case) land subject to a rent-charge of any nature other than one of the comparatively small list mentioned in the Act cannot be purchased out of capital money and brought into settlement. Yet in the interpretation of statutes the maxim *expressio unius est exclusio alterius* must generally be given effect to. In a case which has come to my notice, land which was subject to certain family charges was transferred to an estate company. As a result of changing circumstances, it became desirable for the tenant for life under a strict settlement to purchase the land from the estate company out of capital money, and nothing appeared to be easier, until an examination of the provisions referred to above revealed that the tenant for life had in fact no power to make the purchase. To heighten the absurdity of the situation in this particular case, the instrument which had created the family charges was the settlement under which it was desired by means of the proposed purchase to bring the land in question, so that nobody—least of all the persons for whose benefit the incumbrances had been created—would have been a penny the worse as a result of the transaction.

This is perhaps rather a special case, but if I am right in my conclusion that the purchase of land subject to any kind of rent-charge, other than those specifically provided for in the Act, is not authorised by s. 73, the results are far-reaching. Our forefathers, intent upon good works, all too often laid their land under a small rent-charge in favour of some local charity—an almshouse, maybe, or the village school or a chapel of ease. Such rent-charges may be very small in relation to the value of the land out of which they issue, especially if they have been apportioned as between several parcels in consequence of the division and sale of the original estate, and it very frequently happens that it is to nobody's interest to go to the trouble and expense of extinguishing them under the relevant provisions of the L.P.A., 1925. Another very common type of rent-charge is a rent-charge reserved on a sale—a type of rent-charge, incidentally, that a tenant for life is expressly permitted to reserve on a sale of any part of the settled land: S.L.A., s. 39 (2). The land is just as readily marketable if it is incumbered in this way as it would be if the incumbrance were removed, and from my own experience I know that lands subject to small rent-charges of the kind I have mentioned have been purchased out of capital money in ignorance of the true powers of the tenant for life and trustees in this respect.

It is not only the tenant for life or the person having the powers of a tenant for life under a strict settlement who is alone affected by such restrictions in the matter of purchase of land. Trustees for sale may be similarly affected. If trustees for sale are authorised to invest the proceeds of sale in the purchase of land, s. 6 of the T.A., 1925, becomes applicable. Under that section, a trustee having power to invest in the purchase of land may do so notwithstanding that the land is charged with a rent under the powers of three statutes or sets of statutes, viz., the Public Money Drainage Acts, 1846 to 1856, the Landed Property Improvement (Ireland) Act, 1847, and the Improvement of Land Act, 1864, unless the trust expressly provides to the contrary. On the principle of interpretation already applied to the S.L.A. it is, I think, clear that a trustee for sale authorised to invest in the purchase of land may not purchase land subject to any rent-charge other than those mentioned in the section. This would exclude, e.g., a rent-charge reserved on a sale. Section 6 of the T.A., 1925, is in one way even wider in its application than the analogous provisions of the S.L.A., in that it is not confined to land purchased by trustees for sale but also applies to mortgages of land. Land subject to any rent-charge other than those specifically authorised is in consequence not a suitable security on which a trustee for sale should advance any part of the trust fund.

* * * * *

Another point of interest concerning rent-charges arose recently. A was entitled at the date of her death to a rent-charge as tenant in tail in possession. By her will, which was executed after 1925, she gave the rent-charge to X absolutely. The question was whether the gift operated so as to bar the entail under s. 176 of the L.P.A., 1925. Surprisingly enough, the answer is in the negative. The authority for this statement of the law is *Chaplin* v. *Chaplin*, 3 P. Wms. 229. This case was decided in 1733 and there has been no reported decision on the point since that time in England, although I believe there is a much more recent authority to the same effect in the Irish Reports. The headnote to *Chaplin* v. *Chaplin*, so far as relevant, runs as follows: "Tenant in tail of a rent granted *de novo* without any remainder over suffers a recovery; this will not pass an absolute but only a determinable fee."

The case provides an opportunity to delve into some antiquarian lore and to forget for a few minutes the somewhat barren complexities of modern legislation. There is a distinction for this purpose between a rent-charge which is already *in esse* at the time when it is subjected to a limitation in tail and a rent-charge created *de novo*, i.e., a rent-charge which is created by the same instrument which limits it in tail. Both types of rent-charge are, of course, incorporeal hereditaments and so were always susceptible of the same limitations as all other hereditaments. A tenant in tail of a rent-charge *in esse* could formerly suffer a common recovery and convert his entailed interest into a fee simple in all cases in which, had his interest been an interest in land, he could have so obtained a fee simple in the land. The terre tenant having created a perpetual burden on his land when he created the rent-charge in fee, neither he nor his heirs or assigns could in any way be prejudiced by any subsequent limitation of the rent-charge at the hands of the person for the time being entitled thereto; whether it remained in the grantee of the rent-charge and his heirs or passed from them by assignment or otherwise, the burden remained. But in the case of a rent-charge created *de novo*, it was held that the grantee in tail could not expand his estate into an estate which might endure longer than the period for which the terre tenant had originally intended to burden his land, and if such a grantee or his heirs suffered a recovery, the estate obtained was not a fee simple but merely a base fee. On the failure of the heirs of such a grantee the rent sank into and was extinguished in the land from which it issued. It is true that the barring of an estate tail in land also had the consequence of extending the period during which the estate would subsist, contrary to the intention of the original grantor, but the common law looked at rent-charges very jealously. The grantee of a charge was subject to no feudal services, and was a burden on the tenant of the land who was so subject. What was sauce for the goose was not, therefore, sauce for the gander, and the tenant in tail of a rent-charge created *de novo* was not allowed the privileges in the matter of disentailing which the common law willingly accorded to the tenant in tail of land. In the case referred to the original limitation of the rent in tail to A's predecessor was in the instrument which created the rent, i.e., it was a rent-charge created *de novo*, and X did not therefore acquire a fee simple in the rent-charge but only a base fee, which would endure only so long as there were heirs living, of the requisite quality, to the original grantee in tail. Common recoveries have gone and have been replaced by disentailing assurances, but apart from that the law has not been changed, and it remains as stated in *Chaplin* v. *Chaplin*.

Mr. REGINALD JOSEPH DROMGOOLE has been appointed Deputy Coroner for West Sussex in succession to the late Mr. F. G. Stevens. Mr. Dromgoole was admitted in 1928.

The Recorder of Stamford has fixed the next Quarter Sessions for the Borough of Stamford to be held on Wednesday, 29th October, 1947, at 11.30 a.m.

LANDLORD AND TENANT NOTEBOOK

GIVING UP POSSESSION OF CONTROLLED PREMISES

A NUMBER of communications have reached me commenting on different points in my article on "Increasing Rent of Combined Premises," of 20th September (91 SOL. J. 502). I contended, in that article, that if a tenant of controlled premises which included business premises were willing, on the determination of his tenancy, to pay a higher rent, this object could be safely achieved by the grant of separate leases. I suggested that it would be *advisable* that the tenant should move out for a day or two before the commencement of the new terms; one correspondent now asks whether, in view of *Brown* v. *Draper* [1944] K.B. 309 (C.A.), such a move is not rather *essential*.

Brown v. *Draper* was an unusual, but none the less instructive, decision. The defendant's husband, having sold the house claimed to the plaintiff, stayed on as tenant; matrimonial differences having then arisen, he left the house and the defendant and their child, but did not remove his furniture. The plaintiff served notice to quit and brought proceedings. Giving evidence in the action, the husband, who had paid no rent since, said that he then "finished with the house" and "laid no further claim to it." But he also said that if the defendant took care of the furniture, she could continue to have it. From this, the Court of Appeal drew the inference that, if he ever had given up possession, he had changed his mind when the action was heard. "He not only left the appellant in occupation without taking any steps to revoke the licence which he had given her to continue living there, but he left his furniture in the house in her charge. It is obvious that, if she were to vacate the house, leaving the furniture behind, he would claim the right to enter the house for the purpose of taking it away."

So far, it would not appear that the decision warrants the proposition that a tenancy which follows a controlled tenancy will be deemed to be a controlled tenancy unless vacant possession were enjoyed by the landlord between the expiration of the one and the commencement of the other. The drawing of the inference may be open to some criticism, especially when one considers the non-payment of rent; but all it amounts to is that in the particular circumstances the husband had retained possession though physically absent.

When we proceed to examine the statement of the principles applied to this finding, we find: "We do not see on what ground it can be said that a tenant who remains in possession can, by a mere statement in the witness box in an action to which he is not a party, confer on the court a jurisdiction of which the statute deprives it . . . If he [the husband] wishes to place himself outside the protection of the Acts without putting the landlord to the necessity of taking proceedings his proper course is to deliver up possession. Unless and until he does so, he is under the shelter of the Acts, whether or not he so desires. No contract and, *a fortiori*, no mere statement of his wishes or intentions, can deprive him of the statutory protection."

No doubt these remarks underlie our correspondent's suggestion that if a controlled tenancy of combined premises is to be followed by separate tenancies of the two parts, the business part to become decontrolled, the tenant must move out and in again. But, while appreciating the force of this argument, I would submit that it all turns on what is meant by "remain in possession" and "deliver up possession." The judgment itself shows that these expressions must not be taken literally—the defendant *was* physically absent, and it was not so much his having left his wife and furniture in the house, the one to look after rather than to enjoy the use of the other, as the inference that he had the *animus revertendi*, that led to the finding of possession. He was in the position of the hypothetical sea captain visualised by Scrutton, L.J., in *Skinner* v. *Geary* [1931] 2 K.B. 546, "who may be away for months but who intends to return, and whose wife and family occupy the house during his absence." It is, of course, intention and not motive that matters.

Some will remember how, in the days of "decontrol by possession," the Rent, etc., Restrictions (Amendment) Act, 1923, s. 2 (3), expressly defining possession as "actual possession," it was held in a number of cases, e.g., *Kearns* v. *Bedford* (1934), 50 T.L.R. 348; *Thomas* v. *Metropolitan Housing Corporation, Ltd.* [1936] 1 All E.R. 210, that something far short of physical re-entry would satisfy the requirement. Where s. 15 (1) of the Increase of Rent, etc., Act, 1920, speaks of "so long as he retains possession" but does so "by virtue of the provisions of this Act," I suggest that the question is likewise one of intention. So, I still think that if a tenant and landlord of combined premises both agree, on the termination of a contractual tenancy, that separate new contracts should be entered into, the proposition that the tenant if he does not move out retains possession by virtue of the Acts could easily be refuted.

Another criticism which has been made charges me with a sin of omission; and I admit my guilt. Reference ought to have been made to *Phillips* v. *Hallahan* [1925] 1 K.B. 756, in which it was actually held that a shop, formerly let with a dwelling, was decontrolled when, the landlord having obtained possession, it was separately let. The decision turned largely on the possibility of decontrol by change of user, and the history of the premises differed rather from the state of affairs visualised by those who inspired my article. For the shop had more than once been separately occupied, and the tenant who was claiming protection was not the tenant to whom the premises had been previously let as a whole. Regard must, therefore, be had, when relying on this authority, to the following passage from the judgment of Bankes, L.J.: ". . . it was a question for the deputy county court judge to say whether the two separate lettings were a real or merely a colourable transaction." But my view is still that, if a tenant is willing to pay more rent in return for the advantages of a contractual tenancy, "there is nothing to prevent the parties from so arranging matters that there is nothing to which the Acts apply," as was done in *Maclay* v. *Dixon* [1944] 1 All E.R. 22 (C.A.) (see 88 SOL. J. 243 and 302).

TO-DAY AND YESTERDAY

LOOKING BACK

FROM 1628 until his death in 1639 Dr. Paul Micklethwaite was Master of the Temple. He was soon in conflict with the Benchers on every conceivable point. First of all he claimed the right to dine in the Halls of both the Societies, taking precedence of all others at the Bench table. On 16th October, 1629, the Middle Temple Benchers adopted a resolution denying any such right but declaring that in view of the "extraordinary pains by him taken . . . in often preaching . . . he, and only he, and that only so long as to them shall seem meet, shall by way of courtesy only and guestwise . . . have a place in a chair at the upper end of the Bench table." Nevertheless, when Lord Keeper Coventry dined at the Inner Temple on one occasion the Doctor usurped his place and removed the gold embroidered purse placed before it. In consequence he was bidden to forbear the Hall. In another field he claimed a tithe of ten per cent. on all the lawyers' fees, and when this was refused he retaliated by locking the doors of the Church and preventing the Societies from holding their conferences in the Round. As a High Churchman and follower of Archbishop Laud he clashed with the Puritan element in the Inns. He had the pulpit moved to the side and the Communion Table taken from the body of the choir to the east end. Another bone of contention was Parson's Court, adjoining the Church. He claimed that the buildings there belonged to the Master, and as a result of an appeal to the King he was held entitled to twenty chambers but ordered to deliver them up to the Societies on receipt of £200 a term.

TINY COURT

LAST week I wrote of the enormous Law Courts in Brussels. This week, from information received from the United States, here is a curious contrast in the matter of smallness. Essex

County, Vermont (population 6,500), is the smallest county of the New England mainland. Its capital, Guildhall (population 313), is the smallest shire town in New England. The origin of the name is something of a mystery, for it is not derived from the charming little timber-built town hall or guild hall, as it is called, erected in the late eighteenth century. The place was designated Guildhall in the charter of incorporation granted by Governor Benning Wentworth in 1761 before any settlement had been made. For lawyers the chief interest centres in the county court-house erected in 1850, a larger building, also of wood, but far less pleasantly proportioned, though its square tower and cupola suggests an echo of eighteenth-century memories. The interior of the courtroom is exceedingly plain and simple, a matter of tables and chairs and benches and a balustrade shutting off the lawyers from the public. The dais for the judges is an unostentatious affair of one step up, and on the wall behind them hangs a row of framed portrait photographs. To look at, it might easily be one of the smaller English county courts.

THE THREE JUDGES

THE most interesting thing about it is the row of three chairs set on the dais for the judges. They represent a practice apparently peculiar to Vermont. Though there is no superior court, there is a group of superior judges who go on circuit throughout the State, one of them presiding at all important trials. The principal *nisi prius* court in each county is the county court, consisting of three members, the superior judge and two assistants or "side judges," elected by popular vote in each county and hardly ever lawyers. In theory they may overrule the superior judge, even on a point of law, but, though in practice they never do, the court is not properly constituted unless they are present. The idea was apparently a sort of equitable counter-balance to the danger that a legally-trained judge might sacrifice justice to technicalities. This part of the States was strongly Puritan, and it has been surmised that the idea "corresponded in the field of law to the conception on which the Puritans laid so much stress, the universal priesthood of believers. It was evidently intended to emphasise the thought that the judiciary do not constitute a special order set apart from the rest of mankind, but are simply a body of men who, because of training and experience, have special qualifications for functions which, in theory, any citizen may perform." (Thus my kind informant.) Whatever the Puritan theory, the "side judges" are now in practice relegated, so far as active functions are concerned, to such administrative matters as the laying out of highways.

COUNTY COURT LETTER

Claim to Furniture

IN *Henson* v. *Henson*, at Grantham County Court, the claim was for delivery-up of furniture at 79, Norton Street. The applicant was formerly the licensee of the Durham Ox Hotel, and his case was that the furniture in question had been obtained partly as a legacy from his mother, partly from auction sales and partly by purchase from a Nottingham firm. It had been moved from the Durham Ox to 79, Norton Street to enable the respondent, his wife, to take boarders at the latter address. The respondent's case was that she was carrying on business at the boarding-house separately and apart from her husband. Although the applicant ordered the furniture the respondent had had to pay for it. At the lowest the furniture could not be less than joint property. The applicant had had no interest in the boarding-house business since February, 1939, and it would be unfortunate if, after building up the business, the respondent should lose the furniture. His Honour Judge Shove held that the furniture was provided by the applicant. When the Norton Street house was started there was no separation. The contention that the parties were living separately could not prevail, as they were still cohabiting as man and wife. All the goods, except a few items, were the property of the applicant, and an order was made accordingly.

IN *Clarke* v. *Clarke*, at Bromsgrove County Court, a husband claimed from his wife a bedstead, a rug, four blankets, six fruit glasses, six cups and saucers and £3 given to her for safe keeping. The parties were married (the applicant for the second time) on the 15th December, 1934. On the 15th October, 1946, the wife left her husband and removed the articles in question, which had been bought with the husband's money. The wife's case was that she bought the bed out of her own savings. The rug was hers before the marriage. The money given to the wife was to help to pay for the wedding and not for the articles. During the hearing the claim to the glass and crockery was withdrawn. His Honour Judge Langman held that the bed and £3 were the husband's property. An order was made for their return in fourteen days. The rug and blankets were the wife's property. Costs were allowed to the husband.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Sale of House—LATENT DEFECT—COMPENSATION

Q. Our client has entered into a contract incorporating the National Conditions for Sale for the purchase of a freehold bungalow situate in the country. The bungalow has been built by the vendor's husband and, although the erection of the bungalow was commenced in 1944 and plans duly approved by the local authority, it has only recently been finally completed. The vendor and her husband were living in it up to a short time ago, when our client was allowed to take possession as a tenant at will. Before contracts were exchanged the local authority informed us that the existing property complied with the council's town planning scheme. We have also been informed that the local authority does not issue habitation certificates. Since our client's occupancy rising damp has appeared on the internal walls and our client now discovers that the builder did not form any damp-proof courses and has not put wall plates to any of the internal walls, though so far as he knows the external damp-proof courses are in order. He has been advised that this will have the effect within a short time of rotting the joists and floor boards. Can our client force the vendor to remedy the defect on the grounds (A) that it is a latent defect, (B) that there is an implied warranty in the case of a new house? Alternatively, is there any other remedy available to our client?

A. There is no implied warranty on the mere sale of land that it is fit for any purpose (*Cheater* v. *Cater* [1918] 1 K.B. 247). We quote the following from "Williams on Vendor and Purchaser," 3rd ed., vol. II, p. 761: "A vendor may well sell a house which has dry rot in all the woodwork and is badly drained, to a purchaser who knows nothing of these defects, but believes, to the knowledge of the vendor, that the house is in good repair and well drained, yet the purchaser will not be entitled to claim the rescission of the contract; provided always that the vendor made no representation as to the quality of the thing sold, and did not actively conceal the defect." As to forcing the vendor to remedy the defect or compensate the purchaser, the prospects do not appear rosy. We do not think there is any implied warranty in the case of any house, new or otherwise. Further, cl. 9 (3) of the National Conditions is against the purchaser. We suggest that if the purchaser can allege that there was any representation as to the state of the house (and there well may have been—e.g., that the vendor had lived in it and found it satisfactory), a claim for compensation be made equal to the cost of remedying the defects and to cover inconvenience to the purchaser (e.g., the cost of turning out while the work was done).

REVIEWS

Private International Law. By G. C. CHESHIRE, D.C.L., F.B.A., of Lincoln's Inn, Barrister-at-Law. Third Edition. 1947. London: Oxford University Press. 35s. net.

Though it was obviously unthinkable that Dr. Cheshire should regard the preparation of a new edition as merely an affair of noting up new cases and statutes, it remains a source of wonder how thorough and extensive has been the revision, carried out since the last edition of what had itself seemed a thorough and exhaustive exposition of the subject. A rough and ready measure of the book's expansion, both in matter and in outlook, may be gathered from the list of abbreviations, which shows an increase of about thirty in the number of literary sources consulted by the author, and figuring in references and in the text.

But if the candidate for The Law Society's examinations now has almost two hundred more pages of text to study, he may console himself with the reflection that of all the prescribed books, this is the one whose style and subject matter will most enthrall him, and whose clear arrangement will best lighten his task. Not the least satisfactory feature of the present examination syllabus is the opportunity which it gives to the aspiring solicitor to accompany Dr. Cheshire in his painstaking and enthusiastic

research. There is no better way of appreciating that law is a scientific study and not a mere collection of expedient rules. And when he has passed his examination, the reader will continue to treasure the book for its many out-of-the-way and up-to-date cases and practical examples which cannot fail to be of use to him in his practice. As an instance of its practical utility, we may take the chapter on The Proof of Foreign Law, where the various qualifications which have been held to fit a man out as an expert witness on the law of another country are clearly and scientifically explained.

There is hardly a section of the book which has not been extended to take in some modern example or to propound a new view, or the author's answer to the thesis of some other researcher. His reaction when a high authority lines up with an opposing controversialist is characteristically philosophic, as witness his acceptance of the "extravagant" basis of the decision in the *Vita Food Products* case (p. 327). But just as often the author has the "last laugh." For instance, all scoffing at the criticism which he was the first to noise abroad of *Re Askew* [1930] 2 Ch. 259 (namely that a child born before a marriage can scarcely be regarded as a child of that marriage whether subsequently legitimated or not—see p. 120) is silenced by the case of *Re Wicks' Marriage Settlement* [1940] Ch. 475.

White v. *White* [1937] P. 111 (which appeared to base the nullity jurisdiction solely on the residence of the petitioner) still gives Dr. Cheshire much material for discussion (p. 453); but the reader should bear in mind at this point the recent remarks of Jones, J., in *De Reneville* v. *De Reneville* [1947] 2 All E.R. 112, in which the learned judge distinguished *White* v. *White* as being based on special circumstances, including the fact that the respondent in that case had not protested the jurisdiction. No doubt Dr. Cheshire will further illuminate this perplexing topic on a future occasion.

Witton Booth on Valuations for Rating. Fourth Edition. By F. A. AMIES, Barrister-at-Law, and E. ROWLAND BOOTH, Member of the Rating Surveyors Association. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 55s. net.

The ten eventful years that have passed since the publication of the third edition have necessitated a substantial recasting of this work. Its essential character has, however, remained. The late Mr. Witton Booth in his last preface paid tribute to the help then given to him by his son, one of the present editors.

The detailed explanations of the various methods of valuation continue to be one of the chief features of the book. Examples are numerous and apt. New ways of doing things are discussed. The relevant principles of law are fully set out and there are copious quotations from decided cases. Careful attention is given to the representations of the Central Valuation Committee.

There are forty-two chapters in the book grouped into six parts. Part I (251 pages) discusses the process of valuation; Pt. II describes the valuation of residential and business premises, as distinct from industrial premises which form the subject of Pt. III; the 300 pages of Pt. IV are devoted to the valuation of public utility undertakings; the valuation of public buildings, hospitals, schools and sewerage undertakings is explained in Pt. V; Pt. VI comprises agricultural properties, advertising stations and sports grounds.

Special attention has been given to the treatment of plant and machinery for rating purposes.

There are twenty tables for purposes of easy reference and calculation.

This publication will prove invaluable to officials and practitioners. It is thoroughly up to date and reliable in regard to both law and valuation.

Motor Claims Cases. Supplement to First Edition. By LEONARD BINGHAM, Solicitor of the Supreme Court. 1947. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

When the main volume of Mr. Bingham's work appeared we welcomed the breaking of new ground in a field in which the writer's experience was as good as any other's and better than that of most. This supplement brings the work up to the end of July with such useful material as the full text of the important agreement between the Motor Insurers' Bureau and the Minister of Transport providing for third-party compensation where a motorist is not effectively insured, with full commentary, further notes on the meaning of "solicitor and client" taxation of costs, and perhaps most useful of all a further list of cases of personal injuries with the amounts awarded. We repeat that the legal profession is indebted to Mr. Bingham in respect of this work.

NOTES OF CASES

COURT OF APPEAL

Bird *v.* Hildage

Cohen and Evershed, L.JJ., and Lynskey, J. 15th May, 1947

Landlord and tenant—Rent restriction—Rent paid in arrear—Claim for possession—Effect of previous waivers of delay—Rent tendered before proceedings instituted—"Rent lawfully due and not paid"—Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 & 24 Geo. 5, c. 32), s. 3, Sched. I, para. (a).

Appeal from a decision of Judge Willes given at Bakewell County Court.

The defendant was the tenant of premises owned by the plaintiff and within the Rent Restrictions Acts at a rent of £65 a year payable quarterly on the usual quarter days. The landlord and his predecessor in title had been in the habit of allowing the tenant to make his quarterly payments in arrear without complaint. The tenant on 15th May sent a cheque for the amount due on 25th March, 1946. The landlord's solicitors on 17th May returned the cheque as the matter had been entered in the county court, but, in fact, 21st May was the date of the institution of proceedings. The county court judge, relying on *Panoutsos* v. *Raymond Hadley Corporation* [1917] 1 K.B. 767; [1917] 2 K.B. 473 (C.A.), and saying that a landlord could not suffer periodic defaults and then without warning suddenly terminate the contract on the ground that the rent was not paid punctually, dismissed the claim for possession, and the landlord now appealed. (*Cur. adv. vult.*)

COHEN, L.J., reading the judgment of the court, said that the county court judge's conclusion was not justified by the case on which he had relied. In *Cape Asbestos Co., Ltd.* v. *Lloyds Bank, Ltd.* [1921] W.N. 274, at pp. 275–6, Bailhache, J., explained that *Panoutsos* v. *Raymond Hadley Corporation, supra*, was no authority for the proposition that, where an act had to be done periodically under a contract, the fact that it had been done irregularly in the past justified the assumption that the irregularity would be waived in the future. It would be unfortunate if mere forbearance by a landlord on one or more occasions to exercise his rights were held to bind him for the future. Landlords would then tend to be more harsh in the enforcement of their legal rights. There was the further reason for the court's conclusion that the question here was not whether the landlord could determine the tenancy by reason of the tenant's breach, but whether, under para. (*a*) of Sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, the court had jurisdiction to entertain the suit. If past forbearance by a landlord disentitled him from terminating a contractual tenancy without first giving the tenant reasonable notice, it by no means followed that that forbearance ousted the jurisdiction of the court. It was impossible, as a matter of construction, to say that the condition of para. (*a*) that the rent "has not been paid" was not satisfied when the tenant was in breach of his obligation to pay rent, unless the circumstances amounted to a variation of the contract or to an estoppel. It was next argued for the tenant that, the rent having been tendered before the plaint was entered and that tender having been refused, no part of the rent was, at the date of the institution of proceedings, lawfully due and unpaid within para. (*a*). In reaching the conclusion, for the purposes of para. (*a*), whether any rent was lawfully due and had not been paid, the court must look at the date of the institution of proceedings by which the landlord sought to recover possession (see *Beavis* v. *Carmen* [1920] W.N. 159). Next, was any rent lawfully due from the tenant on 21st May, 1946? In their opinion, rent was not lawfully due unless it could be recovered by process of law, that was, in the case of a landlord, by distress or by judgment in action. A valid tender of rent having been made on 16th May, the landlord could not thereafter distrain (*Johnson* v. *Upham* (1859), 2 E. & E. 250) or recover judgment for it (*Johnson* v. *Clay* (1817), 7 Taunt. 486). Therefore, where tender of rent was made, even after the due date, where time was not made the essence of the contract, that tender prevented rent from being lawfully due from the tenant to the landlord within the meaning of para. (*a*). The claim for possession therefore failed, and the appeal must be dismissed.

COUNSEL: *H. A. Hill; Charles Russell.*

SOLICITORS: *Sharpe, Pritchard & Co.*, for *H. Shelley Barker and Son*, Sheffield; *Cree & Son*, for *Brooke Taylor & Co.*, Bakewell.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

Hines *v.* Winnick

Vaisey, J. 30th July, 1947

Passing-off—"Dr. Crock and his Crackpots"—Fanciful name given to plaintiff and an ensemble of musicians when performing burlesque music in a series of broadcasts—Whether such name associated with plaintiff thereafter—Copyright in burlesque music arranged and produced by plaintiff under such name.

Action.

The plaintiff was an expert in the arrangement and performance of burlesque music. The defendant, who was arranging a series of B.B.C. broadcasts entitled "Ignorance is Bliss," engaged the plaintiff to arrange burlesque music for the broadcasts and to conduct the band which played it, the plaintiff and the band being announced as "Dr. Crock and his Crackpots." The series of broadcasts lasted for over two months, and during this period a reputation was built up for the plaintiff under the name of "Dr. Crock," which he had not before used. The defendant claimed that he was entitled to produce musical sketches for broadcasting not arranged or conducted by the plaintiff under the designation of "Dr. Crock and his Crackpots," and the plaintiff brought this action to restrain the defendant from passing off any "act" under the designated description as and for the plaintiff's musical act, and also to restrain the infringement of copyright in the music arranged by the plaintiff.

VAISEY, J., said that the case for the defendant was that the description in suit was purely fanciful, and that the plaintiff had no right to a monopoly in it or to restrain broadcasting by others so described. The defendant, however, had admitted, in connection with the very common custom of announcing band performances as being given by "X and his band," that on making such announcement he would understand it to mean that X would personally conduct. It made no difference that "Dr. Crock" was a fanciful pseudonym, while X was a real name, once the pseudonym became associated with the plaintiff. Adapting the language of Eve, J., in *Landa* v. *Greenberg* (1908), 24 T.L.R. 441, the name "Dr. Crock" had become part of the plaintiff's stock-in-trade, and it was not open to the defendant to use that name in connection with any person other than the plaintiff in connection with any such performance as that in which the plaintiff took part. The plaintiff was also entitled to copyright in the burlesque music which he had arranged.

COUNSEL: *Aldous* and *Brewis*; *Milner Holland*.

SOLICITORS: *Hall, Clark & Goldhawk* and *Jutsum & Co.*; *Rubinstein, Nash & Co.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

In re Bate; Chillingworth *v.* Bate

Jenkins, J. 17th July, 1947

Administration—Testator and wife found dead—Commorientes—Survivorship—Quantum of evidence to rebut statutory presumption—Law of Property Act, 1925 (15 *Geo.* 5, *c.* 20), *s.* 184.

Adjourned summons.

The testator, aged eighty-three, and his wife, aged seventy-five, were found dead in their kitchen, the cause of death being carbon monoxide poisoning. The tap of the gas oven was slightly turned on, and the body of the testator was lying across that of his wife. On analysis, it was found that the carbon monoxide saturation in the testator's blood was 57 per cent. and the saturation in the wife's blood was 42 per cent. The scientific evidence as to the inference to be drawn from these figures was conflicting; on one side it was said that the inference was that the wife died first; against this it was said that the losses from such specimens of blood between the time of collection of the sample and the time of analysis were usually such that no reliable conclusions could be drawn from the figures. There were no other facts to indicate with any certainty whether the testator or the wife died first.

JENKINS, J., referring to *Hickman* v. *Peacey* [1945] A.C. 304, said that the opinions stated in that case relating to the degree of proof of survivorship which was necessary to exclude the presumption enacted by s. 184 of the Law of Property Act, 1925, were by no means unanimous; it was clear, however, that Lord Simon did not put it too high when he spoke of "evidence leading to a defined and warranted conclusion." The court must be able to do something more than merely conclude that a reasonable explanation of the circumstances was that the testator survived his wife; it must be able to come to a conclusion of fact on grounds which so far outweighed any grounds for a contrary conclusion that the latter could be ignored. In the present case no reliable inference could be drawn from the position of the bodies, and the medical evidence was conflicting. It was "uncertain" within the meaning of s. 184, which was the survivor, and the presumption enacted by that section must prevail.

COUNSEL: *H. Walker*; *Jopling* and *R. C. Horne*.

SOLICITORS: *Johnson, Jecks & Colclough*, for *Down, Scott & Down*, Dorking; *Thicknesse & Hull*.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PRACTICE NOTE

Form of re-grant of Letters Patent

VAISEY, J., directed that in future re-grants of Letters Patent are to include the following form for the protection of innocent infringers, which is to be known as the "Clines" form, the "B.T.H." form referred to in 46 R.P.C. 377 being discontinued:—

"Provided that any person not being a licensee under the said patent at the date of expiry thereof who after such date and before the first appearance in the Official Journal (Patents) of the advertisement of the application upon which this order is made has made used or sold the invention the subject of the said patent or has manufactured or installed any apparatus machinery or plant for the purpose of carrying out any process claimed by the complete specification of the said patent shall be deemed to have done so with the licence of the patentee under the said patent and shall thereafter be entitled to make use or sell the invention without infringement of the patent to the extent hereinafter specified that is to say:—

"(1) In so far as the complete specification of the patent claims an article (other than an apparatus machine or plant or part thereof as specified under head (2) hereof) and any article so claimed has been manufactured by him during the interim period hereinafter defined that particular article may at all times be used or sold.

"(2) In so far as the complete specification claims some apparatus machine or plant or part thereof for the production of an article then any particular apparatus machine or plant or part thereof so claimed which has been manufactured or installed by him during the interim period hereinafter defined and the products thereof may at all times be used or sold and so that in the event of any such apparatus machine or plant or part thereof being impaired by wear or tear or accidentally destroyed a like licence shall extend to any replacement thereof and to the products of such replacement.

"(3) In so far as the complete specification claims any process for the making or treating of any article any particular apparatus machine or plant which during the interim period hereinafter defined has been manufactured or installed by him or exclusively or mainly used by him for carrying on such process may at all times be so used or continued to be so used and the products thereof may at all times be used or sold and so that in the event of such apparatus machine or plant being impaired by wear or tear or accidentally destroyed a like licence shall extend to such process when carried on in any replacement of such apparatus machine or plant and to the products of the process so carried on.

"And this Court doth declare that in the foregoing proviso (*a*) the word 'article' shall be deemed to include any substance material apparatus arrangement machine or plant and (*b*) the 'interim period' means the period between the date of the expiry of the said patent and the date of this Order."

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

Labrum *v.* Williamson

Lord Goddard, C.J., Atkinson and Oliver, JJ.

29th April, 1947

Road traffic—Insurance—Third-party risks—Proposal for insurance as required by statute—Assured misled by issue of policy giving restricted cover—Consequent uninsured user of motor vehicle—Conviction—Disqualification—"Special reasons"—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 35.

Case stated by the Recorder of Northampton.

A garage proprietor made a proposal for a general trade cover for all vehicles used in connection with his trade to an insurance company and received a cover note holding him insured to the full extent requested. The policy in due course sent to the garage proprietor in fact only covered him when he was himself driving. The cover note stated that if the proposal should be declined, the liability of the company should cease, notice being given to the proposer. The garage proprietor remained unaware of the insurers' mistake because he did not read the policy. The justices convicted him of contravening s. 35 of the Road Traffic

Act, 1930, by allowing one of his employees to drive a customer's motor lorry in respect of which there was no separate insurance policy in force. They also disqualified him for holding a driving licence for twelve months, but the Recorder, on appeal, while affirming the conviction, allowed the appeal against sentence to the extent of removing that disqualification on the ground of special reasons in that the garage proprietor was misled by the insurance company's issuing him a cover note and then, after having undertaken to tell him if they declined the proposal, which was for a general cover, sending him a policy which was limited to a named driver. The prosecutor appealed.

LORD GODDARD, C.J., said that he did not resile from what he had said in *Rennison* v. *Knowler* (1947), 63 T.L.R. 150; 91 SOL. J. 85, namely, that it was the obvious duty of the assured to make himself acquainted with his policies, and if he did not understand them to take advice. In *Rennison* v. *Knowler, supra*, there was no suggestion that the assured had received a cover note giving him a general cover and a policy which he would naturally expect to follow the cover note, but which did not. The Recorder here had found that the garage proprietor was misled into believing that he was covered. *Rennison* v. *Knowler, supra*, had not laid down that in no case where a man was misled by the contents of his policy, or, perhaps, had received wrong advice as to the legal effect of the policy, could that be treated as a special circumstance. That could properly be regarded as a special circumstance. Had the facts here simply been that the garage proprietor, having made a proposal, had next received the policy and not looked at it, *Rennison* v. *Knowler, supra*, would have applied; but he had received a cover note which told him in substance that he would receive a policy in accordance with the cover note, or that the directors would inform him if they did not accept the proposal in accordance with his terms. Therefore there were grounds here on which the Recorder could say that there was a special reason for this garage proprietor to be misled, and the appeal must be dismissed.

ATKINSON and OLIVER, JJ., agreed.

COUNSEL: *A. P. Marshall* for the prosecutor. The garage proprietor did not appear and was not represented.

SOLICITORS: *Perkins & Tustin*, Northampton.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Lewis *v.* **Wallace**

Lord Goddard, C.J., Atkinson and Oliver, JJ.
30th April, 1947

Emergency legislation—Building—Price restriction—Price limited by building licence—Statutory offence of exceeding permitted price—Agreement to sell before offence created—Building Materials and Housing Act, 1945 (8 & 9 *Geo.* 6, *c.* 20), *s.* 7.

Case stated by Lawford's Gate (Gloucestershire) Justices.

The appellant was charged with contravening s. 7 of the Building Materials and Housing Act, 1945, on 28th September, 1945, by agreeing to sell a house at a price higher than that limited by the licence under which it was built. On that date the vendor agreed to sell a bungalow to be erected on certain land at a price, including the freehold of the land, of £1,400, completion to be on 15th January, 1946. Building began in November, a building licence being required under reg. 56A (2) of the Defence (General) Regulations, 1939. The maximum permitted sale price of a house of the contemplated dimensions was, under the regulation, £1,200, which the vendor stated in his application for a licence to be the price to be charged. The licence was issued on condition that the house was sold at that price. The purchaser went into possession in June, 1946, completion of the contract having taken place after the Act of 1945 came into force on 20th December, 1945. The prosecutor contended that an offence had been committed although the agreement for sale was made before the Act came into force because the licence limited the selling price to £1,200 and building under it proceeded, and the vendor demanded £1,400 for it, after the Act had come into force. The justices convicted the vendor on the ground that he had, after the passing of the Act, endeavoured to put into force a valid contract of sale at more than the permitted price. He appealed. By s. 7 (1) of the Act of 1945, "Where a house has been constructed under . . . a licence granted for the purposes of a Defence Regulation . . . and the licence . . . has been granted subject to any condition limiting the price for which the house may be sold . . . any person who . . . sells . . . the house for a greater price than the price so limited . . . shall be liable on summary conviction to a fine . . ." The Act further provides that a person sells a house if he sells or agrees to sell any interest in it.

LORD GODDARD, C.J., said that there were three possible offences: selling a house, which meant, in his opinion, a completed sale, that was, an agreement followed by a conveyance; offering to sell a house; or agreeing to sell a house. Each of those acts might be an offence, but when on the 28th September, 1945, the contract which was said here to constitute an offence was entered into, it was not an offence to agree to sell a house at any price, at any rate under the Act of 1945. It appeared that no licence had been granted at that time. Whether, in applying for the building licence, the vendor made some false statement, or whether he had exceeded the terms of the licence, were matters which had not been before the justices and were not before the court. The question before the justices was a charge of entering into a contract to sell a house at £1,400 on 28th September, 1945. At that time there was no Act in force which made that illegal; therefore, with regard to the matter in respect of which the vendor was charged, namely, that of entering into a contract on that day, no offence at all had been committed, and consequently the conviction must be quashed.

ATKINSON and OLIVER, JJ., gave judgments agreeing.

COUNSEL: *Stuart Bates; Skelhorn.*

SOLICITORS: *Capel Cure, Glynn Barton & Co.*, for *W. F. Cook and Son*, Bristol; *Lawrence, Williams & Co.*, Bristol.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Barnsley *v.* **Marsh**

Lord Goddard, C.J., Atkinson and Oliver, JJ.
1st May, 1947

Bastardy—Justices equally divided—Direction for hearing by another court—Court not specified—Form of adjournment—Whether Summary Jurisdiction Act applicable—Poor Law Amendment Act, 1844 (7 & 8 *Vict. c.* 101), *s.* 4—*Summary Jurisdiction Act*, 1848 (11 & 12 *Vict. c.* 43), *ss.* 16, 35.

Case stated by Flintshire Justices.

A mother, having complained that the appellant was the father of her bastard child, took out a summons against him in September, 1946. The summons came on for hearing on 7th October, 1946, within forty days of its service as prescribed by s. 4 of the Poor Law Amendment Act, 1844, before six justices, who, however, were divided in opinion upon it. They announced that fact, saying that another court must hear the case, but giving no directions as to the further hearing. In fact, the matter came before another panel of Flintshire justices on the 23rd December, more than forty days after service of the summons. On that occasion it was objected for the putative father that the proceedings were out of time, as there had been no adjournment of the hearing of 7th October, and that, even if there had been an adjournment, it was out of order for non-compliance with s. 16 of the Summary Jurisdiction Act, 1848, so that the final hearing was not an adjournment of the earlier hearing, and was, consequently, out of time under s. 4 of the Act of 1844. The justices overruled the objection and made an order against the alleged father, who now appealed.

By s. 16 of the Act of 1848, "Before or during" the hearing of a complaint, the justices may "in their discretion . . . adjourn the hearing of the same to a certain time and place to be then appointed."

LORD GODDARD, C.J., said that the case was another illustration of the importance that justices should not, if it could possibly be avoided, sit in an even number, for a majority decision ought always to be available in the event of a division of opinion. The action taken by the justices in his opinion constituted an adjournment, since no particular form of words, or the use of the word "adjournment," was necessary. The test was what the court had in fact done—whether it intended the case to stand over from one hearing to another. That had been intended here. The adjournment which had taken place was valid. The Act of 1848, having regard particularly to the terms of s. 35 of that Act, was not applicable to the code of procedure laid down for bastardy, or to bastardy at all, except in respect of the matters which that Act specially applied to bastardy. He reserved his opinion as to whether s. 16 permitted an adjournment *sine die*, and whether, under that section, an adjournment "to a date to be fixed of which the court will give notice" could be valid. The appeal must be dismissed, since the hearing on 23rd October was an adjournment of the earlier hearing which had been in time.

COUNSEL: *Cartwright Sharp*, K.C., and *Verne*, for the alleged father; *Arthian Davis*, for the mother.

SOLICITORS: *Nicholson, Graham & Jones*, for *Wayne & Co.*, Birmingham; *J. Kerfoot-Roberts & Son*, Holywell.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

MR. T. BARTON

Mr. Tilney Barton, president of Bournemouth Law Society in 1926 and 1927, died on 23rd September, aged eighty-four. He was admitted in 1887 and for twenty-five years was one of the Official Receivers in Bankruptcy for Salisbury, Yeovil and Dorchester districts. He retired in 1929.

MR. L. C. CROCKFORD

Mr. Leslie Charles Crockford, senior partner of Messrs. Wells and Hind, solicitors, of Nottingham, died on 27th September, aged sixty. He was admitted in 1913.

NOTES AND NEWS

Notes

The usual monthly meeting of the directors of the Law Association was held on 6th October, 1947, with Mr. John Venning in the chair. The other directors present were Messrs. C. A. Dawson, W. Alan Gillett, H. T. Traer Harris, G. D. Hugh Jones, S. Hewitt Pitt, Frank S. Pritchard and the Secretary, Mr. Andrew H. Morton. A sum of £417 5s. was voted in relief of deserving applicants and other general business was transacted.

LAW STUDENTS' DEBATING SOCIETY

The new session of the Society commenced with a meeting held at The Law Society's Court Room, on Tuesday, 7th October, 1947 (Chairman, Mr. P. H. North Lewis), when the motion "That the division of Europe into two opposing political groups is inevitable," was carried by four votes, there being eighteen members and two visitors present.

The following debates will take place during October in The Law Society's Court Room, at 7.30 p.m. :—Tuesday, 21st October (Chairman : Mr. J. M. Shaw, M.C.) : "That the claim of women for equal pay is without justification" ; Tuesday, 28th October (Chairman : Mr. B. Greenby) : "That the case of *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] 1 K.B. 130 was wrongly decided."

SOLICITORS BENEVOLENT ASSOCIATION

The annual general meeting of members was held at 60 Carey Street, London, on the 1st October, 1947. Mr. A. F. King-Stephens (Chairman for 1946–1947) presided and extended a hearty welcome to Colonel William Mackenzie Smith, President of The Law Society, thanking him for his kindness in sparing the time to attend the meeting. Colonel Mackenzie Smith thanked the chairman for his remarks and said he was glad to show his interest in the Association, of which he had been a member for many years.

In moving the adoption of the annual report and accounts (which had been circulated), the chairman referred to the substantial increase in membership, over 600 new members having been admitted during the year. Legacies received since the last annual meeting had amounted to £25,000, and the generous support given annually by The Law Society and many of the provincial law societies had been continued. This co-operation was greatly valued. Grants and annuities distributed to 374 beneficiaries during the twelve months amounted to £27,000, and included £1,000 for children's education and training.

Mr. G. E. Longrigg, T.D., M.A., of Bath (vice-chairman), seconded the adoption of the report and accounts, and Mr. John Venning, M.C., M.A., spoke appreciatively of the Association's work and congratulated the Board on a most successful year. Mr. T. S. Curtis (London) proposed a hearty vote of thanks to Mr. King-Stephens, who had had an eventful year of office and had worked very hard. This was seconded by Mr. C. H. Culross (London) and carried with acclamation.

At the Board Meeting which followed the annual meeting, Mr. Henry P. Gisborne, J.P., of London, Lieut.-Colonel Benjamin Arkle, M.C., of Liverpool, and Mr. Cyril Highway, of Birmingham, were elected directors.

Membership of the Association is open to all solicitors on the Roll for England and Wales. The annual subscription (minimum) is one guinea, life membership ten guineas. Full information will gladly be given by the Secretary, at 12 Cliffords Inn, Fleet Street, E.C.4.

Wills and Bequests

Mr. J. W. Lane, solicitor, of Dublin, left £24,533.

Mr. H. L. Reddish, retired solicitor, of Rugby, left £14,611, with net personalty, £14,434.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 2117. **Aliens** Order in Council. September 13.
No. 2112. **National Insurance** (Approved Societies) Regulations (No. 2). September 27.
No. 2091. **Safeguarding of Industries** (Exemption) (No. 7) Order. September 30.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1947

HIGH COURT OF JUSTICE—CHANCERY DIVISION

Mr. Justice VAISEY

Mondays—Bankruptcy Business.

Bankruptcy Motions and Bankruptcy Judgment Summonses will be heard on Mondays, 20th October, 3rd and 17th November and 1st December.

A Divisional Court in Bankruptcy will sit on Mondays, 27th October, 10th and 24th November and 8th December.

Such business as may from time to time be notified.

GROUP A.—Mr. Justice ROXBURGH

Mondays—Chambers Summonses (Group A).

Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.

Wednesdays—Adjourned Summonses.

Thursdays—Adjourned Summonses.

Fridays—Motions and Adjourned Summonses.

Mr. Justice WYNN PARRY

Mr. Justice WYNN PARRY will sit for the disposal of the Witness List.

Mondays—Companies Business.

GROUP B.—Mr. Justice ROMER

Mondays—Chambers Summonses (Group B).

Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.

Wednesdays—Adjourned Summonses.

Thursdays—Adjourned Summonses.

Fridays—Motions and Adjourned Summonses.

Lancashire Business will be taken on Thursdays, 23rd October, 6th and 20th November and 4th and 18th December.

Mr. Justice JENKINS

Mr. Justice JENKINS will sit for the disposal of the Witness List.

COURT OF APPEAL AND HIGH COURT OF JUSTICE CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., Oct. 20	Mr. Andrews	Mr. Farr	Mr. Blaker
Tues., ,, 21	Jones	Blaker	Andrews
Wed., ,, 22	Reador	Andrews	Jones
Thurs., ,, 23	Hay	Jones	Reader
Fri., ,, 24	Farr	Reader	Hay
Sat., ,, 25	Blaker	Hay	Farr

Date	Group A		Group B	
	Mr. Justice Roxburgh	Mr. Justice Wynn Parry	Mr. Justice Romer	Mr. Justice Jenkins
	Non-Witness	*Witness*	*Non-Witness*	*Witness*
Mon., Oct. 20	Mr. Hay	Mr. Reader	Mr. Jones	Mr. Andrews
Tues., ,, 21	Farr	Hay	Reader	Jones
Wed., ,, 22	Blaker	Farr	Hay	Reader
Thurs., ,, 23	Andrews	Blaker	Farr	Hay
Fri., ,, 24	Jones	Andrews	Blaker	Farr
Sat., ,, 25	Reader	Jones	Andrews	Blaker

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices : 88–90, Chancery Lane, London, W.C.2. Telephone : Holborn 1403.

Annual Subscription : Inland, £3 ; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

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